

1                   **IN THE UNITED STATES DISTRICT COURT**  
2                   **FOR THE EASTERN DISTRICT OF OKLAHOMA**  
3                   **MUSKOGEE DIVISION**

4                   MYRA BACCUS, etal.

5                   Plaintiff

6                   V.

7                   CLARENCE BACCUS - BENEFICIARY

8                   Defendants

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§

CIVIL ACTION NO. CV-10-389 JHP

**FILED**

**JAN 23 2012**

**WILLIAM B. GUTHRIE**  
**Clerk, U.S. District Court**  
**By Deputy Clerk**

10                   **MOTION TO DISMISS FOR IMPROPER VENUE**  
11                   **OR IN THE ALTERNATIVE A MOTION TO**  
12                   **TRANSFER IN LIEU OF**

13 **COMES NOW THE** Beneficiary – Clarence Baccus Jr. and states based on FRCP  
14  
15 RULE 12(b)(3) the record shows that Myra Baccus individually and mother and  
16 next friend of K. Baccus & K. Baccus. Has never been served with the summons  
17 and complaint as required by FRCP 4, 4.1, 5, & 8. And is therefore not properly  
18 before this court and not subject to personal jurisdiction of this court. It is further  
19 evident from the record that Myra Baccus and her Minor children are residents of  
20 the State of Texas, The insured Kevin Baccus was at the time of his death, a  
21 resident of the State of Texas, and worked for Health Markets Inc. a Texas  
22 company and the policy in question was initiated and maintained in the State of  
23 Texas. And the events and claims emanating from the State of Texas, it appearing  
24 on the aforementioned information and proved by the record that Venue is not  
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1 proper in this district and that the above parties are indispensable parties and have  
2 not waived their rights, therefore this case should be dismissed accordingly. Or in  
3 the alternative per 28 USC §1404(a) that this case should be transferred to either  
4 the Northern District of Texas or to the Central District of California for the  
5 Convenience of the Parties. Since the Beneficiary is the only current defendant  
6 based on the guidelines laid out by 1404(a) for the Convenience of the Parties  
7 specifically not to cause undue and unnecessary hardship to the defendant transfer  
8 is appropriate and required to the Central District of California. Although far less  
9 convenient to the Defendant, but far more convenient to the parties 4 of whom live  
10 in the northern district of Texas, where witness also reside. Whether the Court  
11 chooses to dismiss or transfer the record clearly shows that continuing this case in  
12 the current district would be inappropriate as Plaintiff's/defendants have made no  
13 claim that would justify even the continuation of this case, and in no event the  
14 continuation of this case in the current district. Moreover the unnecessary cost of  
15 travel and lodging and sheer inconvenience to get to the current district which is so  
16 remote that it does not even have next day delivery of the U.S. Mail from major  
17 cities, places a totally unnecessary and needless burden on the Family of the  
18 Decedent. Whatever the goals of the proceedings legitimate or otherwise they  
19 could be accomplished as was the Prime America case which was adjudicated a few  
20 miles of their home. All of these factors mandate Dismissal or Transfer from this  
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district. The Northern District of Texas or the Central District of California is clearly a more convenient form.

## BACKGROUND

Sec. 1404. Change of venue

### -STATUTE-

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

### **Basic Principles of Section 1404(a) Transfers**

Under 28 U.S.C. § 1404(a), "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The standards applicable to a motion to transfer are a matter of procedural law, four factors guide the exercise of

1 discretion granted by section 1404(a): (1) the plaintiff's choice of forum; (2) the  
2 convenience to the parties; (3) the convenience to witnesses; and (4) the interests of  
3 justice. Routinely courts determine "in light of all the circumstances of the case"  
4 where deference is necessary and which factors are dispositive in establishing  
5 whether another forum is "clearly more convenient." <sup>4</sup>

7  
8 First, courts evaluate whether the plaintiff's choice deserves deference. In this case  
9 the Plaintiffs have made no choice because they have filed no complaint, thus the  
10 decision is an easy one. A plaintiff's choice of forum is given significant deference  
11 if the plaintiff chooses to litigate in its home forum. Thus, if the plaintiff has  
12 significant ties to the district, this factor weighs against transfer. In this case the  
13 majority of the Plaintiffs have significant ties to the State of Texas.

16  
17 Second, courts evaluate whether transfer would be more convenient to the parties.  
18 This factor focuses on the burden to the defendant because "[p]resumably, if  
19 plaintiff chose to file suit in this district, it is willing to overlook any inconvenience  
20 associated with litigating in this forum. However, in this case none of the  
21 Plaintiff's choose to file or have filed in this district they are not Plaintiff's at all but  
22 actually defendants who have no issue with the Beneficiary, the courts restyling of  
23 the case does not change the facts that none of the alleged Plaintiffs have filed any  
24 adjudicate-able issue with this court and are thus as actual defendants subject to the  
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1 same inconveniences as the Beneficiary. For example, if the defendant faces  
2 significant travel difficulty or has infrequent contact with the district, this factor  
3 weighs in favor of transfer.  
4

5  
6 Third, Circuit courts evaluate whether transfer will be more convenient to potential  
7 witnesses. A defendant seeking transfer must be prepared to "clearly specify the key  
8 witnesses to be called" and provide "document[s] containing facts tending to  
9 establish who (specifically) it planned to call or the materiality of that testimony.  
10 Since there is no complaint filed by the alleged plaintiffs, there is no issue before  
11 the court and by law nothing to litigate, thus according nothing to consider against  
12 transfer should the court choose not to dismiss.  
13  
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15  
16 Fourth, Circuit courts evaluate whether transferring is in the interest of justice. This  
17 catch-all factor considers docket speed, consolidation of related cases,  
18 maximization of judicial expertise, and protection of the forum's community  
19 interests. Although the interest of justice factor relates to "the efficient functioning  
20 of the courts, not to the merits of the underlying dispute," it is a fact-specific inquiry  
21 where the nature of dispute at issue is relevant. For example, in patent litigation,  
22 when parties are competitors and delay would decrease the value of the patent-in-  
23 suit, docket speed can be decisive.<sup>12</sup> But docket speed, or lack thereof, is not enough  
24 to compel a transfer in the interest of justice when the balance of the other factors  
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1 establishes that another forum is clearly more convenient. Clearly in this case since  
2 the only issue will be the Insurance Companies failure to timely pay the proceeds  
3 and their failure to pay the total proceeds plus interest into the court. Issues that are  
4 clearly better served in the interest of justice in a Texas Circuit court where  
5 witnesses are available without hardship.  
6

7  
8 ***In re Genentech, Inc.: The Federal Circuit View***

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10 After the United States District Court for the Eastern District of Texas denied a  
11 section 1404(a) motion by defendants Genentech, Inc. and Biogen Idec Inc. to  
12 transfer their patent dispute with Sanofi-Aventis Deutschland GmbH, the  
13 defendants took the unusual step of petitioning the Federal Circuit for a writ of  
14 mandamus. The Federal Circuit granted the petition, ruling that the district court,  
15 "clearly abused its discretion in denying transfer of venue to the Northern District  
16 of California. . . ."  
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18  
19 The Eastern District had denied the motion because none of the California  
20 witnesses were "key witnesses," because Texas was geographically central to the  
21 witnesses and parties, and because plaintiff Sanofi may not have been subject to  
22 personal jurisdiction in California.  
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1 The Federal Circuit disagreed, concluding first that the defendants had shown that  
2 the convenience to witness factor favored transfer. Genentech is a Delaware  
3 corporation with headquarters in San Francisco. Biogen is a Delaware corporation  
4 with a major facility in San Diego that worked on the allegedly infringing product.  
5 Genentech and Biogen identified several witnesses within the Northern District of  
6 California. The Eastern District determined that this was not sufficient because the  
7 witnesses were not "key witnesses." But the Federal Circuit ruled that the  
8 inconvenienced witnesses need not be "key witnesses" as long as they have  
9 knowledge of "relevant and material information at this point in the litigation."  
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13 Second, the Federal Circuit ruled that the convenience to parties factor favored  
14 transfer. The Eastern District found that the Fifth Circuit's "100-mile" rule for  
15 determining cost of attendance for willing witnesses and parties made Texas an  
16 ideal "centralized location" for litigation between Sanofi, Genentech, and Biogen.  
17 The "100-mile" rule states that when the distance between an existing venue and a  
18 proposed venue is more than 100 miles, the inconvenience to witnesses factor  
19 increases in direct proportion to the additional distance to be travelled. The Federal  
20 Circuit ruled that "the 100-mile rule should not be rigidly applied such that it  
21 creates the result presented here. The witnesses from Europe will be required to  
22 travel a significant distance no matter where they testify."<sup>24</sup>  
23  
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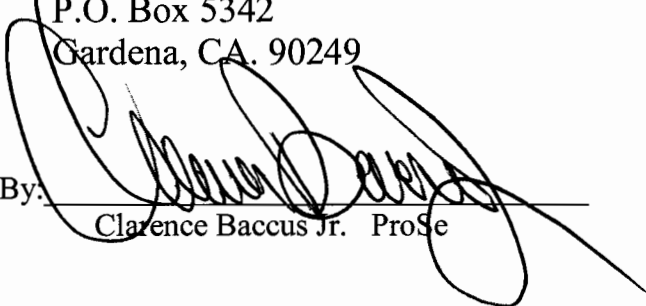
1 Third, the Federal Circuit held that Sanofi's challenge to jurisdiction in California  
 2 was irrelevant to transfer analysis because "[t]here is no requirement under §  
 3 1404(a) that a transferee court have jurisdiction over the plaintiff." This directly  
 4 overruled the Eastern District's determination that "the issue of whether personal  
 5 jurisdiction exists [over Sanofi] in the Northern District of California declaratory  
 6 judgment suit weighs heavily against transfer  
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8  
 9 RELIEF REQUESTED

10 The Beneficiary in conjunction with all family members therefore  
 11 respectfully request the court issue an order dismissing the case as no complaint has  
 12 been filed by alleged Plaintiff consequently there is no issue for this court to litigate  
 13 or in the alternative transfer to either the Central District of California where the  
 14 Beneficiary lives or to the Northern district where Myra Baccus and her minor  
 15 children live.  
 16

17  
 18 Dated: January 19<sup>th</sup>, 2012  
 19

20 Respectfully submitted,  
 21 Clarence Baccus Jr. - ~~Plaintiff~~  
 22 P.O. Box 5342  
 23 Gardena, CA. 90249

24 By:   
 25 Clarence Baccus Jr. ProSe



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent by regular mail in accordance with the California Rules of Civil Procedure, to the addresses of record on this 19<sup>th</sup>, day of January, 2012 as follows:

**VIA REGULAR FIRST CLASS MAIL**

Talisha Winston  
7231 South 92<sup>nd</sup>, East Avenue #5  
Tulsa, Oklahoma 74133

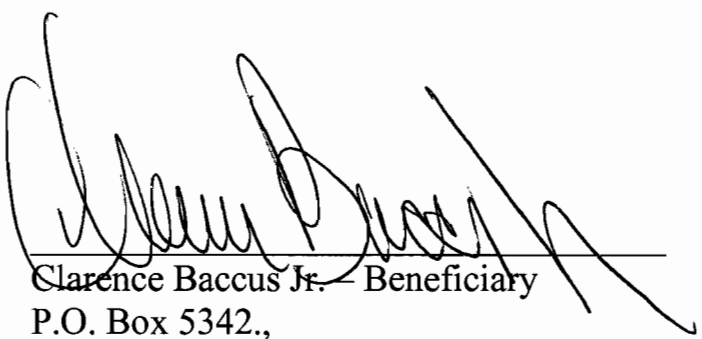
Marianne Baccus  
1812 Quail Run  
Muskogee, Oklahoma 74403

LaShaunna Baccus  
425 E. 24<sup>th</sup>, Street  
Okmulgee, Oklahoma 74447

Kordel Baccus  
10038 Royal Lane  
Dallas, TX 75238

Rosa Baccus  
Route 1 box 708  
Hanna, Ok. 74845

Myra Baccus  
c/o Clarence Baccus  
P.O. box 5342  
Gardena, CA. 90249



Clarence Baccus Jr. — Beneficiary  
P.O. Box 5342.,  
Gardena, CA. 90249  
310-806-5298